

ORDER NO. 2656

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;
Tony Hammond, Vice Chairman;
Mark Acton;
Ruth Y. Goldway; and
Nanci E. Langley

Competitive Product Prices
Inbound EMS 2 (MC2009-10)

Docket No. CP2015-117

ORDER APPROVING CHANGES IN RATES
NOT OF GENERAL APPLICABILITY FOR INBOUND EMS 2

(Issued August 12, 2015)

I. INTRODUCTION

The Postal Service requests a change in rates not of general applicability for Inbound EMS 2 effective January 1, 2016.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

Inbound EMS 2 covers EMS documents and merchandise received from foreign posts for delivery in the Postal Service's domestic delivery area. The Commission

¹ Notice of the United States Postal Service of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, July 31, 2015 (Notice).

approved its addition to the competitive product list in 2008.² Governors' Decision Nos. 08-20 and 11-6 establish EMS prices pursuant to EMS Cooperative procedures under the Universal Postal Union (UPU).³ The Commission has approved six annual proposed rate changes for Inbound EMS 2, each effective January 1, for the years 2010 through 2015.⁴

III. THE POSTAL SERVICE RATE PROPOSAL IN THE CURRENT PROCEEDING

The instant Notice, which proposes to revise the Inbound EMS 2 rates effective January 1, 2016, is the latest in an annual series of rate change proposals that the Postal Service has filed since the product's introduction. The timing of the Notice gives the Commission adequate time to review before the Postal Service communicates advance notice of price changes to the EMS Cooperative.⁵

The Postal Service maintains that the planned rates are in accordance with the terms of the Governors' Decision Nos. 08-20 and 11-6. Notice at 3. It asserts that the new rates comply with the requirements of 39 U.S.C. § 3633(a)(2) and that it has met its

² See Docket Nos. MC2009-10 and CP2009-12, Order Adding Inbound International Expedited Services 2 to Competitive Product List, December 31, 2008 (Order No. 162). Subsequently, the Commission approved the Postal Service's request to change the product name to Inbound EMS 2. See Docket No. CP2013-77, Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013 (Order No. 1822).

³ See Notice, Attachment 2A at 1, Attachment 2B at 2. The Postal Service is a member of the EMS Cooperative, a voluntary group established by the UPU's Postal Operations Council. Notice, Attachment 2A at 1, n.1.

⁴ Docket No. CP2009-57, Order No. 281, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 19, 2009; Docket No. CP2010-90, Order No. 523, Order Concerning Filing of Changes in Rates for Inbound International Expedited Services 2, August 23, 2010; Docket No. CP2011-66, Order No. 806, Order Approving Changes in Rates for Inbound International Expedited Services 2, August 16, 2011; Docket No. CP2012-52, Order No. 1456, Order Approving Rate Changes for Inbound International Expedited Services 2, August 30, 2012; Docket No. CP2013-77, Order No. 1822; Order Approving Rate and Classification Changes for Inbound International Expedited Services 2, August 30, 2013; and Docket No. CP2014-58, Order Approving Changes in Rates Not of General Applicability for Inbound EMS 2, August 1, 2014 (Order No. 2140).

⁵ The EMS Cooperative requires each participating destination postal administration to communicate price changes to its partners directly or through the UPU's International Bureau by August 31 of the calendar year before the changes take effect. See Notice at 2, n.6 (citing Order No. 162 at 9).

burden of providing notice to the Commission of changes in rates within the scope established by Governors' Decision Nos. 08-20 and 11-6, as required by 39 U.S.C. § 3632(b)(3). *Id.* at 5.

IV. COMMENTS

The Public Representative filed comments on August 10, 2015.⁶ No other comments were received. The Public Representative concludes that the proposed Inbound EMS 2 rates satisfy the requirements of 39 U.S.C. § 3633(a). PR Comments at 2. Based upon her review of the financial model, she states that it appears the rates for Inbound EMS 2, in total, should generate sufficient revenues to cover costs and contribute an appropriate share to the institutional costs of the Postal Service. *Id.* at 3.

However, the Public Representative states that the Postal Service's omission of the Pay-for-Performance (PFP) penalty factor in its Calendar Year (CY) 2016 revenue projections is unjustified. *Id.* She states that, based upon the Postal Service's CY 2015 first quarter Report Card, it is likely that the Postal Service will incur small PFP penalties in CY 2016. *Id.* However, according to the Public Representative, these penalties ultimately will not prevent the Inbound EMS 2 product from covering its costs. *Id.* She recommends that the Commission direct the Postal Service to include penalties in its financial models whenever past performance indicates that the Postal Service will likely incur a penalty, even if its effect on cost coverage is small. *Id.*

V. COMMISSION ANALYSIS

The Commission reviews price changes for competitive products in accordance with the requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7. These requirements prohibit the subsidization of competitive products by market dominant products (39 U.S.C. § 3633(a)(1)); require each competitive product to cover its

⁶ Public Representative Comments on Postal Service Notice of Filing Changes in Rates Not of General Applicability for Inbound EMS 2, August 10, 2015 (PR Comments).

attributable costs (39 U.S.C. § 3633(a)(2)); and require competitive products as a whole to cover an appropriate share of institutional costs (39 U.S.C. § 3633(a)(3)).

The Commission has reviewed the Notice, supporting documentation, and the Public Representative's comments in light of the requirements in 39 U.S.C. § 3633(a)(1)-(a)(3). As a result of this review, the Commission finds that the rates presented in the Notice should not lead to the subsidization of competitive products by market dominant products; should cover attributable costs; and should have a positive effect on the contribution that competitive products make to institutional costs. Thus, the Commission finds that the planned rates for Inbound EMS 2 satisfy the applicable statutory criteria and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.

The Commission agrees with the Public Representative that, based upon the Inbound EMS 2 Report Cards submitted as part of its filing, any financial PFP penalties incurred in Fiscal Year (FY) 2016 will have minimal impact on the Postal Service's FY 2016 Inbound EMS 2 revenue and cost coverage. However, the Commission agrees with the Public Representative that, in future filings, the Postal Service should include in its financial model all penalties from the previous calendar year for which a Report Card is available, no matter how minimal the impact on revenue and cost coverage may be.⁷ Therefore, the Commission directs the Postal Service to include penalties in its future filings of Inbound EMS 2 financial models whenever financial penalties have been incurred in the last calendar year for which Report Cards are available, even if the effect on cost coverage is small.

⁷ The Commission observes that the Postal Service's financial model projecting CY 2016 financial results does not include an adjustment for any PFP penalties; therefore, if such penalties were incurred, the model may overstate expected revenues. Although the Postal Service cannot know precisely the extent of penalties that may be incurred during CY 2016, the Commission acknowledges that based on recent performance history, any penalties are likely to be small and should not cause projected CY 2016 cost coverage to fall below 100 percent. For example, the Commission notes that a review of the FY 2013 financial results for the Inbound EMS 2 product, which included PFP penalties actually incurred by the Postal Service, show that the product covered costs. See Order No. 2140 at 4 (citing Docket No. ACR2013, Fiscal Year 2013 Annual Compliance Determination Report, March 27, 2014, at 89).

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Commission finds that the planned rates for Inbound EMS 2, scheduled to take effect January 1, 2016, are in accordance with the relevant statutory and regulatory requirements of 39 U.S.C. § 3633(a) and 39 C.F.R. § 3015.7.
2. The Postal Service shall include in its supporting financial models for all future Inbound EMS 2 rates any Pay-for-Performance penalties incurred in the last calendar year for which Pay-for-Performance Report Cards are available, even if the effect on cost coverage is small.

By the Commission.

Ruth Ann Abrams
Acting Secretary